

The Gazette of India

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EXTRAORDINARY PART II—Section 2 PUBLISHED BY AUTHORITY

No. 25] NEW DELHI, SATURDAY, MAY 7, 1955

LOK SABHA

The following Bills were introduced in the Lok Sabha on 7th May, 1955:—

BILL No. 25 OF 1955

A Bill further to amend the Code of Civil Procedure, 1908

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 1955. Short
and
concise

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In sub-section (1) of section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), after the words "further interest at such rate", the words "not exceeding six per cent. per annum" shall be inserted. Amendment
of sec.
34, Act
of 1908

3. Sub-section (3) of section 35 of the principal Act shall be omitted. Amendment
of sec.
35, Act
of 1908

4. In sub-section (1) of section 35A of the principal Act,—

(i) for the words "not being an appeal" the words "including an execution proceeding but excluding an appeal" shall be substituted; and Amendment
of sec.
35A, Act
of 1908

(ii) the words "if the objection has been taken at the earliest opportunity and" shall be omitted.

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tion
Act V
1908. 5. In section 39 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing in this section shall be construed as authorising a Court to send for execution any decree passed by it *ex parte* before the 26th day of January, 1950, against a defendant who was not amenable, or had not submitted himself, to its jurisdiction to another Court to which the decree could not, under the law in force at the date of the decree, have been sent for execution, or as authorising such other Court to execute the decree”.

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Act V
1908. 6. In section 47 of the principal Act, for sub-section (3) and the *Explanation*, the following shall be substituted, namely:—

“(3) No Court executing a decree shall entertain any question arising in a proceeding under this section between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, if the question had been directly and substantially raised in a former proceeding relating to that decree between the same parties or their representatives and had been finally determined therein.

(4) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed, a defendant against whom a suit has been dismissed and a purchaser at a sale in execution of the decree are parties to the suit.

Explanation II.—The expression “former proceeding” shall denote a proceeding which has been decided prior to the proceeding in question, whether or not it was instituted prior thereto.

Explanation III.—A question shall be deemed to have been raised in the former proceeding, if the matter in dispute had been alleged by one party and either denied or admitted, expressly or impliedly, by the other”.

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Act V
1908. 7. In the proviso to sub-section (1) of section 60 of the principal Act,—

(a) in clause (i), after the words “one-half the remainder”, the words “in execution of any decree other than a decree for maintenance” shall be inserted;

(b) after clause (i), the following clause shall be inserted, namely:—

“(ia) one-third of the salary in execution of any decree for maintenance;”

(c) in clause (j), after the words “to whom” the words and figures “the Air Force Act, 1950 or” shall be inserted.

8. Section 68, section 69, section 70, section 71 and section 72 of the principal Act shall be omitted.

9. In sub-section (1) of section 82 of the principal Act, after the words “within the time so specified”, the words “or within three months from the date of the decree, where no time is so specified” shall be inserted.

10. In sub-section (1) of section 92 of the principal Act, after clause (c), the following clause shall be inserted, namely:—

“(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of trust property in his possession to a new trustee;”

11. In section 102 of the principal Act, for the words “one hundred rupees”, the words “one thousand rupees” shall be substituted.

12. In section 109 of the principal Act, in clause (c), for the words “decree or order”, the words “judgment, decree or final order” shall be substituted.

13. In section 115 of the principal Act, the word “the” shall be omitted.

14. In section 133 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The following persons shall be entitled to exemption from personal appearance in Court, namely:

- (i) the President of India;
- (ii) the Vice-President of India;
- (iii) the Speaker of the House of the People;
- (iv) the Ministers of the Union;

(v) the Governors, Rajpramukhs, Lieutenant Governors and Chief Commissioners of States;

(vi) the Speakers of the State Legislative Assemblies;

(vii) the Chairmen of the State Legislative Councils;

(viii) the Ministers of States; and

(ix) the persons to whom section 87B applies."

(b) sub-section (2) shall be omitted;

(c) in sub-section (3) the words "so exempted" shall be omitted.

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15. In sub-section (1) of section 144 of the principal Act,—

(i) after the words "as a decree", the words "or an order" shall be inserted; and

(ii) after the words "such decree", the words "or order" shall be inserted.

amendmen
of the First
Schedule to
Act V of
1908.

16. In the First Schedule to the principal Act,—

(1) in Order V, after rule 20, the following rule shall be inserted, namely:—

Service of
summons
by post.

"20A. (1) Where, for any reason whatsoever, the summons is returned unserved in the first instance, the Court may, either in lieu of, or in addition to, the manner provided for service of summons in the foregoing rules, direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept service at the place where the defendant or his agent ordinarily resides or carries on business or personally works for gain.

(2) An acknowledgment purporting to be signed by the defendant or the agent or an endorsement by a postal employee that the defendant or the agent refused to take delivery may be deemed by the Court issuing the summons to be *prima facie* proof of service."

(2) in Order XII, after rule 3, the following rule shall be inserted, namely:—

"3A. Notwithstanding that no notice to admit documents has been given under rule 2, the Court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document";

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(3) in Order XVI, after rule 1, the following rule shall be inserted, namely:—

“(1A) Where any party to the suit has, at any time on or before the day fixed for the hearing of evidence, filed in the Court a list of persons either for giving evidence or for producing documents, the party may, without applying for summons under rule 1, bring any such person, whose name appears in the list, to give evidence or to produce documents.”;

Production of witness without summons through Court.

(4) in Order XX, for rule 1, the following rule shall be substituted, namely:—

“1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or, as soon thereafter as may be practicable, on some future day; and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders.”;

Judgment when pronounced.

(5) in Order XXI,—

(a) rule 70 shall be omitted;

(b) in rule 71, the words “or to the Collector or subordinate of the Collector, as the case may be” shall be omitted;

(6) in Order XXV, for rule 1, the following rule shall be substituted, namely:—

“1. (1) At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant:

When security for costs may be required from plaintiff

Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property within India other than the property in suit.

(2) Whoever leaves India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of India within the meaning of the proviso to sub-rule (1).”;

(7) in Order XXXIV, in rule 11,—

(a) sub-clause (ii) of clause (a) shall be omitted;

(b) in clause (b),—

(i) the word 'and' at the end of sub-clause (i) shall be omitted;

(ii) sub-clause (ii) shall be omitted.

(8) in Order XXXVII, in rule 1, after clause (a), the following clause shall be inserted, namely:—

“(b) any District Court or other Court specially empowered in this behalf by the State Government;

(9) in Order XLIV, rule 1 shall be re-numbered as sub-rule (1) thereof, and—

(a) in sub-rule (1) as so re-numbered, the proviso shall be omitted;

(b) after sub-rule (1) as so re-numbered, the following sub-rule shall be inserted, namely:—

“(2) The Appellate Court, after fixing a day for hearing the applicant or his pleader and hearing him accordingly if he appears on that day, and upon a perusal of the application and of the judgment and decree appealed from, shall reject the application, unless it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.”;

(10) in Order XLVII,—

(a) rule 2 shall be omitted;

(b) in rule 7, in sub-rule (1), clause (a) shall be omitted.

17. The ~~Third~~ Schedule to the principal Act shall be omitted.

18. Where, before the commencement of this Act, the execution of a decree has been transferred to the Collector under section 68 of the principal Act and is pending before the Collector on such commencement, then, notwithstanding the omission of sections 68 to 72 inclusive and the Third Schedule to the principal Act, the decree shall be executed by the Collector in accordance with the provisions of the said sections and the said Schedule, as if this Act had not been passed.

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STATEMENT OF OBJECTS AND REASONS

For some time past there has been general dissatisfaction about the increasing dilatoriness, expense and complication of our civil procedure and the administration of civil justice. There are delays at all stages—in the original court itself, during the stages at which the cases are taken up to the High Courts on interlocutory matters, during appeals and also in execution proceedings. This problem has been considered from time to time by various committees set up by the State Governments and diverse suggestions have been made how best to tackle it. While a thorough overhaul of the Code of Civil Procedure is a difficult task which should be entrusted to an expert committee, some amendments of the Code appear to be desirable from the point of view of reducing the delay and expense.

2. This Bill seeks to achieve this object and the notes on clauses appended to the Bill explain some of the provisions thereof.

NEW DELHI;

The 29th April, 1955.

H. V. PATASKAR.

Notes on clauses

Clause 2.—Section 34, which enables courts to award interest, does not impose a maximum limit. This clause proposes to limit the rate of interest which a Court can award on the decretal amount to six per cent. per annum.

Clause 3.—It is proposed to take away the power of the Court to give interest on costs.

Clause 4.—This clause seeks to enlarge the powers of Courts in granting compensatory costs in respect of false or vexatious claims or defence. This is necessary to check frivolous litigation. Under the existing section 35A, Courts can grant compensatory costs, only if the objection has been taken at the earliest opportunity.

It is proposed to enlarge the powers of the Court *firstly* by enabling it to grant compensatory costs, if it is satisfied of the justice thereof, even though the other party has not taken objection at the earliest opportunity, and *secondly* by making the section applicable to execution proceedings also.

Clause 5.—Courts in former Indian States were foreign courts before the commencement of the Constitution Decrees passed by such foreign courts were not executable by courts in India under

se 39 of the Code. The position has become anomalous after the commencement of the Constitution. It is now sought to be made clear that *ex parte* decrees passed before the 26th January, 1950 by such courts shall not be executed by courts in India under section 39 nor any *ex parte* decree passed before that date by any court in India shall be executed in any former Indian State.

Clause 6.—Under the existing section 47, all questions arising between the parties to the suit or their representatives and relating to the execution, discharge and satisfaction of the decree are to be decided by the executing court and not by a separate suit. There have been conflicting decisions of the High Courts as to whether a purchaser at a sale in the execution of a decree is a party to the suit for the purposes of section 47. It is proposed to set at rest the conflict in these cases by expressly providing that a purchaser at a sale in execution of the decree shall be a party to the suit for the purposes of section 47.

The principles of *res judicata*, including those of constructive *res judicata*, are expressly provided in the case of suits under section 11. There is no such specific provision in regard to execution cases. Courts have, however, applied the principles underlying section 11 to execution cases also. There is a difference of opinion among the various High Courts as to how far these principles can be applied to execution cases. This clause seeks to provide expressly how far the principles of *res judicata* should be applied to execution cases.

Clause 7.—In section 60, under clause (i) of the proviso to subsection (1), the future salary of a debtor is exempt from attachment to the extent of the first one hundred rupees and one-half of the remainder, the object being to enable the judgment debtor to maintain himself and his dependents while he is trying to pay off the decretal amount. When, however, the decree itself is for maintenance, there is really no reason why the exemption should be on such a liberal scale. It is, therefore, proposed to provide by an amendment that in the execution of decrees for maintenance, the salary of a debtor to the extent of two-thirds shall be attachable.

Under clause (j) of the proviso to section 60 (1), the pay and allowances of persons belonging to the Army and Navy are exempt from attachment. It is proposed to extend this privilege to members of the Air Forces also.

Clause 8 and the Third Schedule.—Sections 68 to 72 provide that under certain circumstances execution of decrees by sale of immovable property may be transferred to the Collector. This might have worked well at a time when the Collectors were not so over-

worked as now. Recent experience shows that the execution cases transferred to the Collectors have been delayed for years. It is therefore proposed to repeal those sections and the connected Third Schedule.

Clause 9.—Under the existing section 82, a decree against the Government or a public officer is not executable immediately after the decree has been passed. The court has to specify the time within which the decree has to be satisfied. It sometimes happens that, through mistake, the court does not specify the time in the decree. Such omission causes difficulties. To avoid such difficulties, it has been provided that when the court does not specify any time-limit in the decree, three months from the date of the decree shall be taken to be the time-limit specified.

Clause 10.—Section 92 relates to suits with regard to religious and charitable trusts. There is uncertainty at present as to whether a court can in the same proceeding direct the restoration of possession to the new trustees of the trust properties from the trustee who is removed. In order to avoid fresh suits for such purposes, it is desirable to empower the court expressly to pass a decree directing a trustee who has been removed to deliver possession of the trust property to a new trustee.

Clause 11.—Section 102 of the Code now rules out second appeals in all suits of the nature of small causes where the valuation is of five hundred rupees and below. It is proposed to raise the limit to one thousand rupees.

Clause 12.—Section 109 of the Code has been amended to bring it in line with article 133 of the Constitution.

Clause 13.—This clause seeks to restrict the revisional jurisdiction of the High Courts in respect of cases in which the aggrieved party has a remedy by way of appeal to any court.

Clause 14.—Section 133 of the Code was declared *ultra vires* by the Rajasthan High Court on the ground that it offends against article 14 of the Constitution. It is proposed to amend this section to make it constitutionally valid.

Clause 15.—When the decision of a court is varied or reversed, restitution can be made under section 144 to the party affected. This section refers to decrees and does not apply in terms to orders. It is proposed to amend this section by making it applicable to orders also.

Clause 16

Clause 16(1).—This clause provides that summons may be served by registered post under certain circumstances in addition to, or in lieu of, the ordinary procedure of serving summons.

Clause 16(2).—This clause seeks to provide that where the parties themselves do not exchange notices as allowed by order XII rule 2, a court may of its own motion, record admissions and denials.

Clause 16(3).—This clause would enable a party to produce a witness without applying for summons under rule 1. This is open to the party even now; but an enabling provision will save the party from the apprehension of an adverse inference of partisanship.

Clause 16(4).—This clause seeks to give a statutory direction to courts to pronounce judgments as early as possible after the hearing of the case.

Clause 16(5).—This is a consequential change on account of the omission of sections 68 to 72 of the Code.

Clause 16(6).—This clause seeks to enlarge the powers of courts to order the plaintiff to give security for costs whenever the court so thinks fit.

Clause 16(7).—This amendment is consequential on the amendment made by clause 3.

Clause 16(8).—Order XXXVII prescribes a summary procedure for trying suits based on negotiable instruments. At present, this power can be exercised only by the High Courts of Calcutta, Bombay and Madras in the Presidency towns. The proposed amendment will enable the State Governments to empower selected courts also to follow the summary procedure laid down in order XXXVII.

Clause 16(9).—This clause merely provides that no pauper appeal should be rejected without hearing the applicant or its pleader.

Clause 16(10).—When the presiding officer of a court is transferred, rule 2 of order XLVII imposes certain restrictions on the powers of his successor in the matter of hearing review applications. This causes certain difficulties. It is proposed to give the successor all the powers of review which his predecessor had. Rule 2 has therefore been omitted and the other amendment is merely consequential.

Clause 17.—This amendment is consequential on the amendment made by clause 8.

Clause 18.—When this Act comes into force, there may be some execution cases pending before the Collector. It is proposed that the Collector should dispose of those execution cases, notwithstanding the omission of sections 68 to 72 and the Third Schedule.

BILL* No. 26 OF 1955

A Bill further to amend the Land Customs Act, 1924.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. This Act may be called the Land Customs (Amendment) Act, 1955.

2. For the Schedule to the Land Customs Act, 1924, the following Schedule shall be substituted, namely:—

"THE SCHEDULE

(See section 9)

Provisions of the Sea Customs Act, 1878, which are made applicable for the purpose of the levy of duties of land customs.

Sections 3A, 4, 8 to 10, 21, 23, 25, 26, 29, 29A, 29B, 30 to 36, 37 (except the proviso), 38 to 40, section 88, section 167, Nos. 1, 8, 9, 37 to 40, 72 to 76, 76A, 76B, 77 to 81, sections 168 to 170, sections 170A, 171, 171A, 172 to 176, section 178, section 178A, sections 179 to 181, 182 to 184, section 186, section 187, section 187A, sections 188 to 190, section 190A, sections 191 to 197, and sections 200 to 204."

STATEMENT OF OBJECTS AND REASONS

The Sea Customs (Amendment) Bill, 1954, now passed by Parliament seeks to place on a statutory basis certain existing practices regarding customs procedure, to take certain additional powers for effective control of smuggling, to make provision for the regulation of licensing of custom-house agents and to provide for review by customs authorities of decisions of their subordinates. These provisions would also be necessary for application at land frontiers, in the same manner as they are applicable to sea frontiers. The object of the Bill is to include in the existing Schedule to the Land Customs Act, 1924 the new provisions contained in the Sea Customs (Amendment) Bill, 1954.

NEW DELHI;

The 14th April, 1955.

A. C. GUHA.

*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Lok Sabha the consideration of the Bill.

FINANCIAL MEMORANDUM

The new section 170A of the Sea Customs Act, which is one of the sections proposed to be applied to Land Customs frontiers by clause 2 of the Bill, seeks to provide for persons who secret smuggled goods inside their bodies being screened or X-rayed, and suitable action being taken for bringing out such goods. Sub-section (8) of section 170A of the Sea Customs Act, as proposed in clause 11 of the Sea Customs (Amendment) Bill, 1954, provides that any expenditure incurred for the purpose of enforcing the provisions of that section (including fees payable to a radiologist or a registered medical practitioner) shall be defrayed by the Central Government. Such expenditure incurred in respect of offences committed at the land customs frontiers is not likely to be considerable. In all probability the expenditure incurred as a result of the Bill becoming law will be less than Rs. 1 lakh per annum.

BILL NO. 27 OF 1955

A Bill further to amend the Indian Coinage Act, 1906

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Coinage (Amendment) Act, 1955.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After section 13 of the Indian Coinage Act, 1906, the following section shall be inserted, namely:—

“14. (1) The rupee, half-rupee and quarter-rupee shall be respectively equivalent to one hundred cents, fifty cents and twenty-five cents and shall, subject to the provisions of sub-section (1) and sub-section (2) of section 13 and to the extent specified therein, be a legal tender in payment or on account accordingly.

(2) All coins issued under the authority of this Act in any denominations of annas, pice and pies shall, to the extent specified in section 13, be a legal tender in payment or on account at the rate of sixteen annas, sixty-four pice, or one hundred and ninety-two pies to one hundred cents, calculated in respect of any such single coin, or number of such coins, tendered at one transaction, to the nearest cent, or where the cent above and the cent below are equally near, to the cent below.

(3) All references in any enactment or in any notification, rule or order under any enactment or in any contract, deed or other instrument to any value expressed in annas, pice and pies shall be construed as references to that value expressed in cents converted thereto at the rate specified in sub-section (2)."

STATEMENT OF OBJECTS AND REASONS

It is proposed to introduce a decimal system of subsidiary coinage in place of the existing one. Modern trade and commerce demand speed and simplicity in the method of computation and the decimal system is admirably suited for the purpose. The decimal system has already displaced all other systems in the most advanced countries of the world. Public opinion in India also has all along expressed itself in favour of a decimal system.

2. A Bill on the subject was introduced in 1946 but owing to the unsettled financial and political conditions after the partition, the Bill was not proceeded with. The question has, however, been receiving the consideration of the Government and it is felt that the present is the opportune time for the changeover.

3. The rupee would continue to be the standard coin and would remain unaltered. At present the rupee is divided into 16 annas and each anna into 12 pies. It is proposed to divide the rupee into one hundred cents and issue coins in denominations of cents. For some time the existing coins would also continue to circulate and provision has accordingly been made for conversion of the existing coins into cents.

4. The present Bill seeks to achieve the object by amending the Indian Coinage Act, 1906.

A. C. GUHA.

NEW DELHI;

The 30th April, 1955.

M. N. KAUL,
Secretary.

